



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 06, 2023

IN THE MATTER OF:

Appeal Board No. 628902

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 628901, 628902, and 628903, the claimant appeals from the decisions of the Administrative Law Judge filed April 6, 2023, which denied the claimant's applications to reopen the June 30, 2022 default decisions in A.L.J Case Nos. 122-04121, 122-04122, and 122-04123, continuing in effect the decisions in those cases. The June 30, 2022 decisions continued in effect the January 31, 2022 default decisions in A.L.J Case Nos. 121-14144, 121-14145, and 121-14146, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective February 22, 2021, on the basis that the claimant was not capable of work; charging the claimant with an overpayment of \$6,528 in regular benefits recoverable pursuant to Labor Law §

597 (4); an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$5,100 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$1,744.20 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded an opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. The record has not been sufficiently developed on the issues of the claimant's applications to reopen, and further testimony and other evidence are needed on these issues, as well as on the underlying merits.

Upon remand, the claimant shall be questioned regarding the reason for her failure to appear at the June 30, 2022 hearing. Towards this end, the claimant shall be confronted with her January 26, 2023 letter, in the file at page 109, in which the claimant indicates that she missed "the second hearing" because her cell phone was not working; the "Request for Hearing" document in the file at pages 138-139, dated December 22, 2022, which indicates that the claimant did not appear due to phone problems; and the record of the June 30, 2022 proceeding which indicates that calls were made to the claimant's number that went straight to her voicemail. Pages 109, 138, and 139 shall be received into evidence after the appropriate confrontation and opportunity for objection.

Further, the claimant shall be confronted with a letter dated July 4, 2022 and an envelope postmarked July 7, 2022, in the file at pages 146 and 147, but not made part of the record. The claimant shall be questioned to determine whether this letter was sent by the claimant in an attempt to reopen the June 30, 2022 hearing decision. These pages shall be received into evidence after the appropriate confrontation and opportunity for objection.

With respect to the claimant's application to reopen the January 31, 2022 hearing decisions, and to determine whether the claimant made diligent efforts to find legal representation, the claimant shall be questioned further regarding her attempts to contact and obtain representation following her default in proceeding on January 31, 2022, and shall be prepared to provide specifics regarding her attempts.

The claimant shall also be questioned regarding how soon she applied for reopening of the January 31, 2022 default in proceeding once she realized that her attempts to obtain representation were not being successful. The claimant shall be questioned further to determine whether the May 17, 2022 request received into evidence as Hearing Exhibit 8, was the first time she asked for a reopening of the January 31, 2022 decisions. If it was not, the claimant is directed to produce evidence that she asked for a reopening prior to May 17, 2022, and such evidence shall be received into the record after the appropriate confrontation and opportunity for objection.

Testimony and other evidence shall be received on the underlying issues of capability; the recoverable overpayment of regular and FPUC benefits; and the imposition or forfeit penalties in connection with the initial determination that the claimant made wilful misrepresentations in connection with her claim

for benefits.

The hearing Judge may receive into the record any evidence needed to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that the April 6, 2023 decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the issues of the claimant's applications to reopen the June 30, 2022 and January 31, 2022 decisions; the claimant's capability effective February 22, 2021; the recoverable overpayment of regular unemployment and FPUC benefits; the imposition of forfeit penalties connected with any wilful misrepresentations made by the claimant, all upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER